



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 29, 2000

James T. Darby, Jr.
Executive Director, SLRCOG
Post Office Drawer 1837
Sumter, South Carolina 29151

Re: Informal Opinion

Dear Mr. Darby:

Thank you for your recent letter inquiring whether a dual office holding situation would exist if an individual were to serve simultaneously as both Chairman of a Regional Council of Governments and as an elected member of a county school board. For the reasons discussed below, it is my opinion that concurrent service in these positions would not violate the State Constitution's prohibition against dual office holding.

Article XVII, Section 1A of the South Carolina Constitution, provides that "no person may hold two offices of honor or profit at the same time . . .," with exceptions specified for an officer in the militia, a member of a lawfully and regularly organized fire department, constable, or a notary public. As concluded by Attorney General Daniel McLeod in an opinion dated April 26, 1977, "[t]o determine whether a position is an office or not depends upon a number of circumstances and is not subject to any precise formula." The South Carolina Supreme Court, though, has held that for this provision to be contravened, a person concurrently must hold two offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). "One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing and not occasional or intermittent, is a public officer." Id., 78 S.C. at 174. Other relevant considerations, as identified by the Court, are whether statutes, or other authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

Previous opinions of this Office have concluded that one who would serve on a county school board would hold an office for dual office holding purposes. *See, e.g., Ops. Atty. Gen.* dated June 21, 1999; May 7, 1998 and October 14, 1994. Therefore, it must be determined whether serving as an appointed member of a Regional Council of Governments would likewise constitute an office.

Mr. Darby
Page 2
August 29, 2000

Enclosed for your review are copies of S.C. Const. Article VII, § 15 and Article VIII, § 13(C) which exempt members of Regional Councils of Governments, who are elected or appointed officials or employees of government, from the dual office holding prohibitions of the State Constitution. Accordingly, it is my opinion that an individual may serve simultaneously as both Chairman of a Regional Council of Governments and as an elected member of a county school board without violating the State Constitution's prohibition against dual office holding.

I trust this information is responsive to your inquiry and that you will not hesitate to contact me if I can be of additional assistance. This letter is an informal opinion only. It has been written by a designated Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Zeb Williams".

Zeb C. Williams, III
Deputy Attorney General

ZCW/an